

KARL R. LINDEGREN, SBN 125914
SHAUN J. VOIGT, SBN 265721
CATHARINE MORISSET, *Pro Hac Vice*
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, California 92614
Telephone: (949) 851-2424
Facsimile: (949) 851-0152

Attorneys for Defendant
WIZARDS OF THE COAST LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADAM SHAW, PETER
GOLIGHTLY, JUSTIN TURNER,
and JOSHUA STANSFIELD, as
individuals and on behalf of others
similarly situated and the general
public,

Plaintiffs,

vs.

WIZARDS OF THE COAST, LLC,
Defendant.

Case No. 5:16-cv-01924-EJD

**REPLY IN SUPPORT OF
DEFENDANT WIZARDS OF THE
COAST LLC'S MOTION TO
DISMISS PLAINTIFFS' SECOND
AMENDED COMPLAINT
PURSUANT TO FRCP RULE 12(b)(6)**

DATE: September 20, 2018
TIME: 9:00 a.m.
CTRM: 4, 5th Floor

Complaint Filed: April 12, 2016
Trial Date: None

REPLY IN SUPPORT OF MOTION TO DISMISS

Defendant WIZARDS OF THE COAST LLC's ("Wizards") moving papers explain, in great detail, why Plaintiffs have failed to adequately state a claim for relief with respect to any of the causes of action in their Second Amended Complaint. [Dkt. No. 75.] On July 3, 2018, Plaintiffs submitted a purported "opposition" to Wizards' Motion to Dismiss. [Dkt. No. 76.]

Notably, Plaintiffs do not actually oppose any of the substantive arguments or legal authority presented by Wizards in the Motion to Dismiss. [See generally, Dkt. No. 75.] As a result, Plaintiffs effectively concede the validity of Wizards' arguments. *Ramirez v. Ghilotti Bros. Inc.*, 941 F. Supp. 2d 1197, 1210 & n.7 (N.D. Cal. 2013); see also *Qureshi v. Countrywide Home Loans, Inc.*, No. 09-4198, 2010 WL 841669, at *6 n. 2 (N.D.Cal. Mar. 10.2010) (deeming plaintiff's failure to address, in opposition brief, claims challenged in a motion to dismiss, an "abandonment of those claims") (citing *Jenkins v. County of Riverside*, 398 F.3d 1093, 1095 n. 4 (9th Cir.2005)); *Sportscare of America, P.C. v. Multiplan, Inc.*, 2011 WL 589955, at *1 (D.N.J. Feb. 10, 2011) ("In most circumstances, failure to respond in an opposition brief to an argument put forward in an opening brief constitutes waiver or abandonment in regard to the uncontested issue."); *Scott v. City of Phoenix*, 2011 WL 3159166, at *10 (D.Ariz. Jul. 26, 2011) (failure to oppose statute of limitations argument constituted waiver); *Foster v. City of Fresno*, 392 F.Supp.2d 1140, 1147 n. 7 (E.D.Cal.2005) ("failure of a party to address a claim in an opposition to a motion for summary judgment may constitute a waiver of that claim."); *In re Online DVD Rental Antitrust Litig.*, 2011 WL 5883772, at *12 (N.D.Cal. Nov. 23, 2011) (absent unusual circumstances, failure to respond to argument on merits "viewed as grounds for waiver or concession of the argument"); *Mariscal v. Graco, Inc.*, 52 F. Supp. 3d 973, 984 (N.D. Cal. 2014).

///

///

1 Based on the foregoing, Wizards respectfully requests that the Court grant
2 its Motion and dismiss the first through tenth causes of action in Plaintiff's SAC.

3
4 DATE: July 13, 2018

FISHER & PHILLIPS LLP

5
6 By: /s/ Shaun J. Voigt
KARL R. LINDEGREN
7 SHAUN J. VOIGT
CATHARINE MORISSET
8 Attorneys for Defendant,
WIZARDS OF THE COAST LLC
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of FISHER & PHILLIPS LLP and my business address is 444 S. Flower Street, Suite 1500, Los Angeles, CA 90071.

On **July 13, 2018**, I served the foregoing document entitled **REPLY IN SUPPORT OF DEFENDANT WIZARDS OF THE COAST LLC'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT PURSUANT TO FRCP RULE 12(b)(6)**, on all the appearing and/or interested parties in this action as follows:

SEE ATTACHED MAILING LIST

☐ [by **MAIL**] I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ [by **ELECTRONIC SUBMISSION**] - I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

☐ [by **PERSONAL SERVICE**] I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s).

☐ [by **FEDERAL EXPRESS**] I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

☒ **FEDERAL** - I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **July 13, 2018**, at Los Angeles, California.

MELODY BIGLAY

Print Name

By: /s/ Melody Biglay

Signature

MAILING LIST

<p> Matt Righetti, Esq. John Glugoski, Esq. RIGHETTI GLUGOSKI, PC 456 Montgomery St., Suite 1400 San Francisco, CA 94101 Telephone: (415) 983-0900 Facsimile: (415) 397-9005 Email: matt@righettilaw.com jglugoski@righettilaw.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> Reuben D. Nathan, Esq. NATHAN & ASSOCIATES, APC 600 W Broadway Ste. 700 San Diego, CA 92101-3370 Telephone: (949) 263-5992 Facsimile: (949) 209-1948 Email: rnathan@nathanlawpractice.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> Ross Cornell, Esq. ROSS CORNELL, ESQ., APC 111 W. Ocean Blvd., Suite 400 Long Beach, CA 90802 Telephone: (562) 612-1708 Facsimile: (562) 394-9556 Email: ross.law@me.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> David Borgen, Esq. James Kan, Esq. GOLDSTEIN BORGEN DARDARIAN & HO 300 Lakeside Drive, Suite 1000 Oakland, CA 94612-3536 Telephone: (510) 763-9800 Facsimile: (510) 835-1417 dborgen@gbdhlegal.com jkan@gbdhlegal.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>
<p> Michael Malk, Esq. MALK LAW FIRM 1180 S. Beverly Dr., Suite 302 Los Angeles, CA 90035 Telephone: (310) 203-0016 Facsimile: (310) 499-5210 mm@malklawfirm.com </p>	<p> Attorneys for Plaintiffs, ADAM SHAW, PETER GOLIGHTLY, JUSTIN TURNER, and JOSHUA STANSFIELD </p>